IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Mat.Appeal.No. 138 of 2005(E)

OS.407/2000 of FAMILY COURT,TRIVANDRUM
.....

PETITIONER: APPELLANT/DEFENDANT:

THANKAPPAN, S/O. APPALOSE,
MALAYAVILA PUTHEN VEEDU, PALUKAL VILLAGE,
MALAYADI P.O., KALIYIKKAVILAI, KANYAKUMARI DIST.,
TAMIL NADU.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: PLAINTIFFS 1 AND 2:
---

1. SANUMATHI, D/O. NESAMMA,
KUSAKUDIVILAKOM VEEDU, NEDOORKOLLA DESOM,
AMARAVILA CHAYKOTTUKONAM, THIRUVANANTHAPURAM DIST.

2. MINI OF -DO- -DO-.

BY ADV. SRI.G.SUDHEER

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & T.R. RAMACHANDRAN NAIR, JJ

==========

C.M. APPL. NO. 1000/2005

&

Mat. Appeal NO. 138 OF 2005

==========

Dated this the 3rd day of July, 2007.

JUDGMENT

Kurian Joseph, J

C.M. Appl. No. 1000/2005

This is a petition to condone the delay of 1516 days in filing appeal against the judgment and decree in O.S. 407/2000 on the file of the Family Court, Thiruvananthapuram. The appellant is the defendant in the case and the plaintiffs are his former wife and daughter. In the affidavit accompanied by the petition, it is stated that the petitioner had not received summons from the court and hence matter could not be contested. It is also stated that the petitioner was suffering from various diseases and most of his time he spent in hospital. Annexure A certificate dated 06.01.2005 is produced along with the affidavit wherein it is stated that "as a result I did not know about the proceedings in time and I could not file an appeal in time. Hence there is a delay of 1516 days in filing the appeal." It is stated in the medical certificate that the petitioner has been undergoing treatment in the hospital for uncontrollable diabetics since 2002 on out patient basis. There is nothing on record to show that he was

admitted in the hospital at any point of time, and there is also nothing to show that he was prevented by sufficient cause from travelling and taking steps to defend the case. We are also not prepared to accept the affidavit on its face which is vague and evasive. The suit was decreed on 27.02.2001. The records show that the petitioner refused to receive summons and hence the same was served by affixture. It is also seen that there was attachment before the judgment. Still further, it is seen that the petitioner had received notice in execution proceedings filed in the year 2003, in E.P. No. 16/06. Even thereafter, the petitioner did not pursue the matter in appeal. Only after four years, the petitioner has filed the affidavit with evasive statement that he was not keeping well and he had not received notice. The statement is ex facie not true. The petitioner had in fact been working as driver in the Tamil Nadu Tansport Corporation. The petitioner is grossly negligent in prosecuting his case. Law cannot reach to help such persons, particularly taking note of the fact that the property was sold in auction by the respondents, sale certificate was issued to them, delivery was ordered and thereafter mutation was effected. The 1st respondent, mother had, in fact, transferred her share in favour of daughter and son-in-law.

2. For all the above reasons, we are satisfied that the petitioner has not made a case for condonation of delay of more than four years. Even after receiving notice in the execution proceedings, the petitioner waited for another one year. There is no explanation whatsoever for the said delay. Thus, there is no merit in the application and the petition for condonation of delay is dismissed.

Mat. Appeal No. 138/2005

In view of the order in C.M. Appl. No. 1000/2005, this Mat. Appeal is dismissed.

KURIAN JOSEPH, JUDGE.

T.R. RAMACHANDRAN NAIR, JUDGE.

rv